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DEC 18 1998

FEDERAL COMMUNICATIONS COMMISSION
U.S. DEPARTMENT OF COMMERCE
WASHINGTON, D.C. 20554

December 18, 1998

ORIGINAL

HAND DELIVERED

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
TW-A325
Washington, D.C. 20554

Re: RM 9387;
Reply Comments of Andrew Corporation

Dear Ms. Salas:

Transmitted herewith, on behalf of Andrew Corporation, are an original and nine (9) copies of its Reply Comments in the above-referenced proceeding.

If you have any questions concerning this matter, please call me.

Respectfully submitted,



Russell H. Fox

Enclosures

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U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND COMMISSION
WASHINGTON, D. C.

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To: The Secretary

Andrew Corporation (“Andrew”), by its attorneys and pursuant to the provisions of Section 1.401 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), respectfully submits these reply comments in the above-referenced proceeding. As set forth more fully below, because the record fully supports the regulatory relief requested by Andrew, the Commission should expeditiously initiate a rule making proceeding to amend the provisions of FCC rule section 22.367(a)(4).

On September 18, 1998, Andrew filed a petition for rulemaking (“Petition”), requesting that the FCC initiate a rule making proceeding designed to amend the provisions of Section 22.367(a)(4) of the regulations (the “Rule”) to eliminate the requirement that licensees of analog cellular radiotelephone systems employ only base station antennas with vertical polarization. AirTouch Communications, Inc. (“AirTouch”) and GTE Service Corporation (“GTE”) submitted responsive comments and Bell Atlantic Mobile, Inc. (“BAM”) submitted Reply Comments (AirTouch, GTE and BAM are referred to herein collectively as the “Carriers”).

II. DISCUSSION

A. The Commenters Supported Andrew's Petition.

Possibility of Harmful Interference. The Carriers, providers of digital and analog wireless communications services, supported Andrew's Petition. As an initial matter, the Carriers agreed with Andrew that amendment of the Rule would not cause interference concerns. For example, GTE agrees with Andrew that the likelihood of interference to TV antennas is minimal. GTE Comments at 3. GTE further adds that "significant isolation between cross polarizations does not occur until . . . the 4 and 6 GHz bands used for microwave communications." *Id.* AirTouch stated that "the technological bases for the prohibition no longer remain." AirTouch Comments at 1. Thus, the Carriers agreed with Andrew's assertion that amendment of the Rule would not implicate interference concerns. Accordingly, the Commission should reconsider its 1994 assertion that operating with crossed polarizations reduces interference to adjacent channel users, especially considering the fact that TV broadcasters are vacating the 746-806 MHz band. Petition at 8.

Antenna Cost and Placement Considerations. As Andrew pointed out in its Petition, the Commission also stated in 1994 that considerations relating to antenna design and interoperability favored requiring vertical polarization for cellular providers. Petition at 7. However, Andrew demonstrated that, because of advances in antenna technology, continued application of the Rule actually *increases* costs because newer technologies may not be employed. *Id.* at 5. The Carriers again support Andrew's claims. For example, AirTouch states that, if the FCC amends the Rule, cellular operators will be able to purchase a single antenna instead of three or four antennas that provide the same level of functionality.

AirTouch also notes that antenna structure leasing costs would be lower. AirTouch Comments at 3-4.

In addition to the cost savings involved with reducing the number of antennas employed in a cellular system, the Carriers each noted that employing dual polarized antennas will permit the use of antenna structures that are more aesthetically pleasing, reducing the space necessary to erect such antenna structures, and potentially ameliorating local concerns regarding antenna structure placement. BAM summarizes the physical benefits of reducing the number and size of antenna structures: "Tower loads can be reduced, more antennas can be collocated on the same tower, and the appearance of the antenna will be improved." BAM Reply Comments at 2. GTE describes the typical cellular antenna site as requiring a "large triangular support structure," and states that the size of these structures could be reduced if the Rule were amended. GTE Comments at 5. See also BAM Reply Comments at 2. The Commission is well aware of these unsightly triangular structures -- typically 12 feet per side -- that sit atop communications towers. Andrew's Petition demonstrated that these triangular structures could be substantially reduced in size. Petition at 5. In fact, GTE states that, in its PCS operations, it has enclosed such antenna designs within flagpoles. GTE Comments at 5-6.

B. The Commission Should Accord the Petition Treatment as a Request for Forbearance.

In its comments, AirTouch states that the Commission should consider the Petition as a petition for forbearance. AirTouch Comments at n. 3. AirTouch re-states the statutory three-part test to determine whether forbearance is proper. 47 U.S.C. § 160 (1997). In particular, the FCC is required to forbear from enforcing or applying its regulations to telecommunications carriers when (1) enforcement of a provision is unnecessary to ensure that

the relevant charges and practices are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement of that provision is unnecessary to protect consumers; and (3) forbearance from applying the provision is consistent with the public interest. Because forbearance is appropriate in this case, Andrew agrees with AirTouch's comments.

Andrew's requested relief meets the 3-part forbearance test. As an initial matter, requiring analog cellular carriers to transmit with vertical polarization is not necessary to ensure reasonable and non-discriminatory service – the two concepts are simply unrelated. Customers do not know (and likely do not care) what type of transmitting equipment is employed by their cellular carrier. Further, as indicated above, forbearance will reduce each analog cellular carrier's cost of providing service, permitting those carriers to offer service to consumers at a lower price. Finally, forbearing from requiring vertical polarization is plainly consistent with the public interest, because it will permit greater wireless collocation, GTE Comments at 5, and minimize the "visual impact" of cell-site antennas. AirTouch Comments at 3. BAM Comments at 2.

Accordingly, the Commission should consider the Petition as a request for forbearance. Employing this approach, the FCC could simply forbear from enforcing the Rule rather than waste scarce resources by initiating a rule making proceeding to amend the Rule.

C. Regulatory Parity Must Be Ensured.

In its Petition, Andrew stated that digital cellular carriers, Personal Communications Service ("PCS") and Specialized Mobile Radio ("SMR") carriers are not subject to the Rule, or any similar policy. Petition at 8. Thus, Andrew asserted that the Commission was required

to eliminate the Rule for analog cellular carriers as a matter of regulatory parity. The Carriers supported Andrew's Petition. AirTouch Comments at 4; GTE Comments at 6; BAM Reply Comments at 2-3. In fact, GTE claims that newer, pure digital cellular systems will benefit from a competitive advantage unless the Rule is amended. *Id.* Because it states that it would employ advanced antennas immediately if the Rule were amended, AirTouch also demonstrates that amendment of the Rule is not a hypothetical matter. AirTouch Comments at 4. Accordingly, the Carriers have demonstrated that analog carriers will be unfairly disadvantaged if the Rule is not amended.

D. Use of Multiple Polarization will Improve System Performance


As BAM points out, the use of dual polarization antennas will likely improve cellular system performance. First, BAM points out the increased use of portable units operating on cellular systems makes it more difficult for subscriber units to effectively receive vertically polarized signals; the use of dual polarization increases the ability of mobile and portable units to receive a base station antenna signal, regardless of the polarization. BAM Reply Comments at 3-4. Second, BAM correctly argues that the use of non-vertical polarization will improve the indoor performance of cellular systems as well.

III. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Andrew requests that the Federal Communications Commission initiate a rule making proceeding to amend the Rule. Alternatively, Andrew requests that the agency forbear from enforcing the Rule as suggested herein.

Respectfully submitted,

ANDREW CORPORATION



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Dated: December 18, 1998

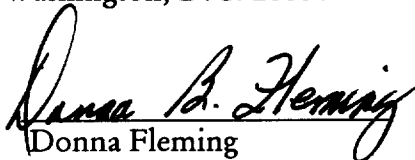
CERTIFICATE OF SERVICE

I, Donna Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 18th day of December, 1998, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing Reply Comments to the following:

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